

Amendment and Response
Applicant: William J. Bertrand et al.
Serial No.: 10/698,117
Filed: October 31, 2003
Docket No.: M190,247,101 / P0011522.00
Title: INDICATOR TOOL FOR USE WITH AN IMPLANTABLE MEDICAL DEVICE

REMARKS

The following remarks are made in response to the Final Office Action mailed June 22, 2010 and the Advisory Action mailed September 7, 2010 and is filed in support of the concurrently-filed Request for Continued Examination. In that Office Action, claims 8, 10-13, and 15-17 were rejected under 35 U.S.C. §103(a) as being unpatentable over Bertrand et al., U.S. Publication No. 2002/0022793 (“Bertrand”) in view of Weijand et al., U.S. Patent No. 6,305,381 (“Weijand”). Claims 9 and 14 were rejected under 35 U.S.C. §103(a) as being unpatentable over Bertrand in view of Weijand as applied to claims 8 or 13 above, and further in view of Abraham-Fuchs, U.S. Patent No. 5,136,242 (“Abraham-Fuchs”).

With this Response, claims 8 and 13 have been amended. Claims 1-36 remain pending in the application and are presented for reconsideration and allowance.

35 U.S.C. §103 Rejections

Independent Claim 8

Independent claim 8 relates to an electronic magnetic-based indicator tool, and recites, amongst other things, a housing, an electronic compass module, and a locator tool interface module. The housing carries the electronic compass module and the locator tool interface tool module, and has an electric connection to a locator tool. In this regard, the locator tool of claim 8 includes a processing module that receives magnetic field data electronically communicated from the locator tool module. As amended, claim 8 recites that the processing module receives and stores background magnetic field data, and receives target magnetic field data from the electronic compass module when the indicator tool is connected to the locator tool and is located above an implanted flow control device. Further, the processing module determines an orientation of a magnetic indicator device provided with the implanted flow control device based upon the background and target magnetic field data. Finally, the processing module electronically determines a setting of a valve coupled to the magnetic indicator device from the determined orientation of the magnetic indicator device. For the reasons below, it is respectfully submitted that the cited art does not teach or otherwise make obvious at least these features.

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The Final Office Action interprets Bertrand as teaching each of the features of claim 8 except for the claimed processing module. To address this deficiency, the Final Office Action references the location processor 2 of Weijand, contending that one of skill would reasonably consider replacing the magnetic compass 62 of Bertrand with the antenna array 3 and location processor 2 of Weijand. Applicant respectfully disagrees, and further asserts that the proposed modification does not teach each and every feature of amended claim 8.

Bertrand is a position indicator/adjustment tool set for ascertaining and adjusting the setting of an implanted valve. The Bertrand indicator tool 28 includes a central body 60 and a compass 62, and is selectively placed into a locator tool 26. The compass 62 has a magnetized pointer 84 that rotates about a spindle 86, with the pointer 84 "pointing" at an index 88 formed on the central body 60. In response to a magnet placed near the indicator tool 28, the pointer 84 "points" to a particular designation along the index 88, thereby indicating a valve setting. Even if the compass 62 of Bertrand could somehow be replaced with the antenna array 3/location processor 2 of Weijand, the resultant indicator tool would still have this same operational construction; namely, magnetic field information from the antenna array 3 is processed by the location processor 2 and somehow implemented to "point" the pointer 84 at a particular location along the indicator tool's index 88. The so-generated indication of valve setting is independent of the separate locator tool 26. In contrast, amended claim 8 recites that the processing module is provided with the locator tool, not the indicator tool. Along these same lines, the locator tool processing module of amended claim 8 is programmed to determine an orientation of the magnetic indicator device, as well as to electronically determine a setting for the valve. With the modified indicator tool of Bertrand, however, the locator tool has no processing module, and thus cannot perform the determinations as claimed. In fact, Bertrand is premised upon the indicator tool 28 performing and providing all valve setting determinations via the indicator tool pointer 84/index 88 independent of the locator tool 26. Thus, Bertrand teaches away from the inventive features of amended claim 8 whereby the indicator tool simply senses and electronically communicates electronic field information to the separate locator tool/locator tool's processing module that, in turn, discretely determines an orientation of the magnetic

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indicator device and the valve setting. For at least reasons, then, amended claim 8 is allowable over the cited art. Claims 9-12 depend from claim 8 and thus, for at least the above reasons, are also allowable.

Independent Claim 13

Independent claim 13 relates to an electronic magnetic-based indicator tool, and recites, amongst other things, an indicator tool housing configured for removable assembly to a housing of a locator tool. A target compass module is provided within the indicator tool housing, and a background compass module is provided within the locator tool. Further, a processing module is provided in the locator tool, and receives background magnetic field data from the background compass module, and target magnetic field data electronically communicated from the target compass module when the indicator tool is assembled to the locator tool housing. Further, the locator tool's processing module determines a valve setting on an implanted flow control device based upon the background and target magnetic field data. In rejecting claim 13, the Office Action references the antenna array 3 of Weijand as teaching the target and background compass modules of claim 13. Regardless of whether the antenna array 3 is correctly viewed as measuring background and target magnetic field data, the asserted modification of Bertrand necessarily incorporates an entirety of the antenna array 3 within the Bertrand indicator tool 28. With this construction, a separate locator tool background compass module as claimed is not taught. Stated otherwise, amended claim 13 recites removably assembleable indicator tool and locator tool housings, with each of the separate housings maintaining a different compass module. The proposed modification does not teach these features. For at least these reasons, amended claim 13 is allowable over the cited art.

Claims 14-17 depend from claim 13. For at least the above reasons, then, claims 14-17 are allowable over the cited art.

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CONCLUSION

In view of the above, Applicant respectfully submits that the pending claims are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of these claims is respectfully requested.

No fees are required under 37 C.F.R. 1.16(h)(i). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

Please consider this a Petition for Extension of Time for a sufficient number of months to enter these papers, if appropriate. At any time during the pendency of this application, please charge any additional fees or credit overpayment to Deposit Account No. 500471.

Any inquiry regarding this Response should be directed to Timothy A. Czaja at Telephone No. (612) 573-2004, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,

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By their attorneys,

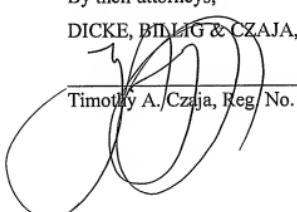
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9/26/2010



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